THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3971 of 2007

Dated:01.03.2007

Between:

Dharmasothu Lachiram.

…PETITIONER

and

The State of Andhra Pradesh, rep. by its Principal Secretary, Hyderabad, and others.

…RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3971 of 2007

ORDER:

The petitioner was elected as Member of Mettapally Mandal Parishad Territorial Constituency (MPTC) of Tallada Mandal in Khammam District in 2006. Third respondent sent a communication bearing RC.No.A1/599/2006 dated 14.02.2007 informing the petitioner that he incurred disqualification for being Member of MPTC under Section 19(3) read with Sections 22 and 156(2) of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity). The reason for the same was that he had more than three children. Aggrieved by the same, instant writ petition is filed seeking invalidation of disqualification.

The learned counsel for the petitioner placed strong reliance on a decision of this Court in **N. Tirupataiah v. District Panchayat Officer, Nellore**[1] in support of the contention that third respondent is not competent to disqualify a Member, Sarpanch or MPTC Member and that such power is vested only in the District Court as per Section 22 of the Act. The legal position is not seriously denied. In **Tirupataiah's** Case (supra), after referring to various relevant provisions of the Act, this Court observed as under.

> An analysis of above provision would show that (i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified under Sections 17 to 20 of the Act; (ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the Panchayat Secretary appointed to each Gram Panchayat; (iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; (iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, such member or any other member of the Gram Panchayat, or Panchayat Secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and (v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.

Yet again, the following observations are made.

> We are concerned in this case with sub-article (2) of Article 243F, which in plain terms mandates that the question of disqualification of a member shall be referred to a decision of such authority as the legislature may prescribe. By Section 22(1) as amended by A.P. Act 22 of 2002, the legislature has prescribed the 'District Court' as an authority to decide the question of disqualification. Though the provision refers to various authorities like (a) executive authority, (b) District Panchayat Officer, (c) Commissioner and (d) District Court, the decision making power in regard to disqualification of a member is given only to the District Court and none else. Therefore, the District Panchayat Officer cannot and could not have passed the impugned order.

Therefore, the impugned order dated 14.02.2007 insofar it purports to disqualify the petitioner is

not in accordance with Law. However, now that it has been pointed out by third respondent as directed by second respondent, the petitioner may apply to the District Court having jurisdiction over the area in the matter of disqualification as alleged. Under Sub-Section (2) of Section 22 of the Act, unless a member is disqualified by the District Court having jurisdiction, he shall be entitled to continue as Member. Therefore, the respondents should take necessary action in the matter to allow the petitioner to continue as MPTC Member. A week's time from the date of receipt of a copy of this order is granted to the petitioner to file application before the District Court, Khammam.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

(V.V.S.RAO, J)

01st March, 2007
ghn

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[1] 2005(1) ALT 426